

MONICA BONA, PETITIONER AND APPELLANT, VS. HOSPICIO BRIONES ET AL., OBJECTORS AND APPELLEES.*G.R. No. 10806. July 06, 1918*

Ponente: TORRES, J.

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Counsel for Monica Bona, the widow by the second marriage of the deceased Francisco Briones who died on August 14, 1913, applied for the probate of the will which the said deceased husband on September 16, 1911, executed during his lifetime; for the fixing of a day for the hearing and presentation of evidence after all the interested parties had been cited; and then for the approval of the partition of property made by the testator in the said will. By an order dated January 20, 1915, Monica Bona's petition was granted and a date set for the trial and other necessary proceedings for the probate of said will.

Counsel for Hospicio, Gregoria, and Carmen, all surnamed Briones, the legitimate children by the first marriage of the testator, by a pleading dated March 5, 1915, opposed the probate of the will presented by the widow of the deceased Briones, alleging that the said will was executed before two witnesses only and under unlawful and undue pressure or influence exercised upon the person of the testator who thus signed through fraud and deceit; and he prayed that for that reason the said will be declared null and of no value, with costs against the petitioners.

The trial of the case was opened and in the presence of counsel for both parties, Gregorio Bustilla, one of the witnesses of the said will, was examined and he stated under oath: That he as well as Sixto Barrameda and Domingo de la Fuente, was actually present as attesting witness when Francisco Briones executed his will in the month of September in his (Bustilla's) house situated in the municipality of Bao, Ambos Camarines; that Francisco Briones knowing of the presence of notary Domingo de la Fuente in the house, he went upstairs and announced himself; that on being asked what he wanted, Briones stated that he wanted to execute his will; that after Briones and the notary had talked with each other, the former left and after a while returned bringing with him some paper; that then Domingo de la Fuente, under the direction of Francisco Briones, began to draft the will, which when finished was signed by the latter in the presence of the notary, of the declarant, and of another witness, Sixto Barrameda; that then the three witnesses—the declarant, de la Fuente, and Barrameda—signed in the presence of each other. The declarant identified the signature placed on the will by the testator Briones and those of the other witnesses Sixto Barrameda and Domingo de la Fuente, who all signed in the presence of the testator himself. He stated further that the testator at that moment was in his sound judgment and not forced to execute the will. He identified the document Exhibit A as the will executed by Francisco Briones and the signature of the latter as the one placed by the testator. By agreement of both parties it was made to appear in the record that, if the witnesses Sixto Barrameda and Domingo de la Fuente were called, they would have testified in the same terms as witness Gregorio Bustilla.

In view of the above, the judge rendered judgment, dated March 27, 1915, denying probate to the will Exhibit A as executed by Francisco Briones. From the judgment, counsel for Monica Bona appealed and prayed to be allowed to sue further as a pauper; whereupon, by order of March 31, 1915, the judge admitted the appeal,

ordered the original records to be brought up, and reiterated his order of December 23, 1913, declaring Bona as a pauper, for the purposes of the appeal interposed.

The whole issue discussed by the parties and submitted for the decision of this court resolves itself as to whether or not in the execution of the will in question the solemnities prescribed by section 618 of Act No. 190 have been observed.

But before proceeding further it is indispensable to note that the will in question was executed by Francisco Briones on September 16, 1911, as already stated and the order denying probate was rendered on March 27, 1915, both dates being prior to that of Act No. 2645 amending said section 618 and promulgated on February 24, 1916, which took effect only from July first of the last named year; so that, in order to explain whether or not the above-mentioned will was executed in accordance with the law then in force, the last named law cannot be applied and the will in question should be examined in accordance with, and under the rules of, the law in force at the time of its execution.

The oft-repeated section 618 of Act No. 190 says:

"No will, except as provided in the preceding section, shall be valid to pass any estate, real or personal, nor charge or affect the same, unless it be in writing and signed by the testator, or by the testator's name written by some other person in his presence, and by his express direction, and attested and subscribed by three or more credible witnesses in the presence of the testator and of each other. The attestation shall state the fact that the testator signed the will, or caused it to be signed by some other person, at his express direction, in the presence of three witnesses, and that they attested and subscribed it in his presence and in the presence of each other. But the absence of such form of attestation shall not render the will invalid if it is proven that the will was in fact signed and attested as in this section provided."

A mere reading of the last four paragraphs or parts of the will Exhibit A shows in a clear manner that the said will in its form and contents expresses without shadow of doubt the will of the testator; and that in its execution the solemnities prescribed by the above-mentioned section 618 of Act No. 190 have been observed.

Even though Domingo de la Fuente drafted the will and intervened in its preparation as a notary, by the order and under the express direction of the testator, it is nevertheless true that he did it as a witness to the execution of the said will with positive and concrete acts, while the two other witnesses Gregorio Bustilla and Sixto Barrameda merely attested all that appeared in the second of the four paragraphs mentioned; for in it they certify that the foregoing testament contains the last will of the testator Francisco Briones; that the latter told them that before and at the time that he dictated his will, there was no inducement nor threat by anybody; and that as he did not know how to write the Spanish language, said testator requested Domingo de la Fuente to write the will, and he did it as it is now drafted, certifying also, that the testator Briones signed his will voluntarily with his own hand, in the presence of the declarants who, as witnesses, signed the instrument on the date expressed. Domingo de la Fuente on his part declared that the two said witnesses formally swore before him on the certification which precedes the said will and, according to this testimony as shown in the records and the testimony of the above-mentioned witnesses, the said Domingo de la Fuente wrote and drafted the said will Exhibit A by the order and under the direction of the testator Francisco Briones, who signed in the presence of the witnesses, Bustilla and Barrameda and of Notary Domingo de la Fuente, all of whom immediately signed also in the presence of the testator, each doing it in the presence of each other. So that, although it is not shown expressly that Domingo de la Fuente was an attesting witness to the will, yet it cannot be denied that it was he who wrote it by the order and under the direction of the testator; that he was a witness to its execution from the first to its last line; and that he was perfectly aware of the fact that all that he had written in the document Exhibit A expresses the genuine and true

will of the testator. He saw and was present when the latter signed his will, as also when the two witnesses Bustilla and Barrameda affixed their signatures; said witnesses also saw and were present when Domingo de la Fuente signed at the end of the said document.

The name of Domingo de la Fuente appears as that of a notary who certifies as to the certainty of the will made by Francisco Briones and of the signatures of the testator as well as of the witnesses at its end; and as the law does not require that one of the witnesses must necessarily be a notary, and it cannot be denied that Domingo de la Fuente attested the execution and the signing of the will not only by the testator but also by the attesting witnesses, it cannot but be admitted that Domingo de la Fuente intervened, attested, and signed the testament as a witness.

This is a case in which the judicial criterion should be inspired in the sense that it is not defeated, and if the wish of the testator is so manifest and express as in the instant case, it is not proper nor just to invalidate the will of Francisco Briones merely because of some small defect in form which is not essential nor of great importance, such as the failure to state therein that Domingo de la Fuente was also a witness to the said will when he signed it twice. As a matter of fact, he understood the contents of the will better than the two other attesting witnesses, for he really was a witness and he attested the execution of the will during its making until it was terminated and signed by the testator, by the witnesses, and by himself, even though he did it in the capacity of a notary.

The last paragraph of section 618 of Act No. 190 supplies a legal basis to support the validity of the Will in question with the conditions for its probate because, notwithstanding the existence of such defect merely in the form and not in the substance, the certification of authenticity and the very text of the will show in a clear and indubitable manner that the will Exhibit A contains the last will of the testator, and that it was signed by the latter and attested as being true and legitimate not only by the two witnesses Bustilla and Barrameda but also by the one who wrote it, Domingo de la Fuente, who was also a truthful and reliable witness, even though he be called a notary public.

The requisites established by Act No. 2645 which amended the oft-repeated section 618 cannot be required in the probate of the will here, inasmuch as this document was executed in September, 1911, five years before said amendatory law began to take effect (July 1, 1916), while the testator died on August 14, 1913, two years and some months before the enforcement of the said law; and so, the only law applicable to the present case is the provision contained in section 618 of Act No. 190, and in accordance with the provisions of this section, the said will should be probated; for it has been presented to the court many months before the amendatory act went into effect.

It is well known that the principle that a new law shall not have retroactive effect only governs the rights arising from acts done under the rule of the former law; but if the right be declared for the first time by a subsequent law it shall take effect from that time even though it has arisen from acts subject to the former laws, provided that it does not prejudice another acquired right of the same origin.

It is well known that hereditary rights are not born nor does the will produce any effect until the moment of the death of the person whose inheritance is concerned. (Decision rendered in cassation by the supreme court of Spain on June 24, 1897.)

In view of these facts, it follows that the judgment appealed from should be reversed and it should be declared as we hereby declare that the will Exhibit A has been executed in due form by Francisco Briones on September 16, 1911, and that the said will contains and expresses the last will and testamentary wishes of the deceased testator. Consequently, let the records be returned to the court wherefrom they came with a certified copy of this resolution in order that the judge, upon petition by the proper party, may provide for the necessary proceedings with respect

to the inheritance, and the clerk of the court may issue certified copies of the said testament; without any special ruling as to costs. So ordered.

Johnson, Carson, Street, Malcolm, Avanceña, and Fisher, JJ., concur.

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